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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: July 12, 2022) Case No.: PSH-22-0117
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Issued: November 22, 2022

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be restored.

I. Background

On January 15, 2022, police arrested the Individual for Felony Corporal Injury to a Spouse, after she was involved in a physical altercation with her spouse.

Because of the security concerns raised by this arrest, the local security office (LSO) issued a letter of interrogatory (LOI) to the Individual. Exhibit (Ex.) 7 at 1. The Individual responded to this LOI on February 4, 2022. Ex. 7 at 1. In this response to the LOI, the Individual admitted that she could not fully remember the circumstances of the incident that led to this arrest because she had consumed approximately sixteen units of alcohol in a two-to-three-hour period preceding the incident. Ex. 7 at 1. The Individual further reported:

I am currently in counseling through [my employer’s employee assistance program (EAP)], as well as through [a mental health provider]. I am taking an anger management class . . . and a domestic violence class online. I have also attended

¹ Under the regulations, “[a]ccess authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

[Alcoholics Anonymous (AA)] meetings. I have decided to implement all these things on my own behalf, so that I can continue to grow in a positive direction, reestablish my healthy habits, and prevent this from every happening again.

Ex. 7 at 4.

On February 9, 2022, the LSO issued a second LOI to the Individual inquiring about her alcohol consumption. Ex. 6 at 1. The Individual responded to the second LOI on February 9, 2022. Ex. 6 at 13. In this response, the Individual admitted that she had consumed approximately 16 units of alcohol prior to the January 15, 2022, incident, and that her alcohol consumption had increased during the previous two years because of “the social situations [she] had found herself in many times.” Ex. 6 at 2-3. She claimed that she no longer used alcohol to “the point of intoxication,” and that the January 15, 2022, incident was the last occasion on which she had consumed alcohol to the point of intoxication. Ex. 6 at 2-3. She further stated that “[t]he use of alcohol on the day of January 15th 2022, has left me with a lot of guilt and shame in my personal life. It has definitely put a little more strain on my marriage, but miraculously, through my positive actions, I can say that my behavior is changing, I’m taking better care of myself, and my marriage is in a really okay/good place right now.” Ex. 6 at 3. The Individual reported that she had received three sessions of individual counseling from her employer’s EAP and had attended individual counseling sessions with a private therapist from April 2019 through December 21, 2021. Ex. 6 at 6-7. The Individual had also voluntarily attended anger management classes. Ex. 6 at 7-8. The Individual reported, however, that she had not received any counseling or treatment for alcohol-related issues. Ex. 6 at 11.

Because the security concerns raised by the Individual’s arrest and her heavy alcohol consumption were not resolved by the Individual’s two LOI responses, the LSO requested that she undergo an evaluation by a DOE Psychologist (Psychologist), who conducted a clinical interview (CI) of the Individual on March 22, 2022. Ex. 8 at 1. In addition to interviewing the Individual, the Psychologist reviewed the Individual’s security file.² Ex. 8 at 2.

The Psychologist issued a report of her findings (the Report) on April 8, 2022. Ex. 8 at 9. In the Report, she found that the Individual had met the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) for Adjustment Disorder (AD) with symptoms of anxiety and emotional dysregulation. Ex. 8 at 6. She further opined that the Individual’s AD led to impaired stability and judgment. Ex. 8 at 6. In order to address her AD, the Psychologist recommended that the Individual:

Continue individual or group psychotherapy at least twice a month with the goals of practicing emotional regulation and/or anger management skills, setting and enforcing personal boundaries, and improving interpersonal communication skills.

² The Psychologist also administered the Minnesota Multiphasic Personality Inventory-Third Edition (MMPI-3) to the Individual and had her undergo a Phosphatidylethanol (PEth) laboratory test that detects alcohol consumption during the previous 28 days. Ex. 8 at 2. The Individual’s PEth test result was negative, indicating that the Individual had not engaged in moderate to heavy alcohol consumption during the three to four weeks prior to March 22, 2022, the date on which the sample was collected. Ex. 8 at 5.

She should continue treatment for at least four months or until she and her therapist agree that the treatment goals have been met.

Ex. 8 at 6-7.

While the Psychologist found that the Individual did not meet the DSM-5 criteria for Alcohol Use Disorder (AUD), she noted that the Individual had been binge drinking once or twice a month. Ex. 8 at 6. She did not find that the Individual was reformed or rehabilitated from her binge drinking, but opined that the Individual, having adopted a more appropriate alcohol consumption pattern, “is on an appropriate path.” Ex. 8 at 6. The Psychologist recommended that the Individual continue refraining from binge drinking for an additional four months, and if she experienced a relapse of her binge drinking, “she should participate in an Addiction Medicine Recovery Program treatment for at least eight weeks to gain skills to control her drinking.” Ex. 8 at 6.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing her that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21. The Individual requested a hearing, and the LSO forwarded the Individual’s request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from the Individual, her spouse, her coworker, and the Psychologist. *See* Transcript of Hearing, Case No. PSH-22-0117 (hereinafter cited as “Tr.”). The Individual submitted 15 exhibits marked as Exhibits A through Q.³ The DOE Counsel submitted 10 exhibits marked as Exhibits 1 through 10.

Exhibits A, B, C, D, E, F, G, and H are the laboratory reports for a series of urine screenings for drugs and alcohol administered to the Individual on July 18, 2022, July 27, 2022, August 4, 2022, August 12, 2022, August 19, 2022, August 26, 2022, September 2, 2022, and September 9, 2022. Each of these reports indicate that the Individual tested negative for alcohol and a series of other commonly abused substances on those dates.

Exhibit I is a letter to the Individual from a Licensed Marriage and Family Therapist (the Therapist) who treated the Individual. The letter states:

Per your request, your previous diagnosis of Adjustment Disorder has been resolved. Your current diagnosis [is] Mild Alcohol Abuse Disorder in Early Remission. Your dates of treatment include: 7/7/22, 7/12/22, 7/14/22, 7/15/22, 7/19/22, 7/22/22, 7/26/22, 7/29/22, 8/2/22, 8/5/22, 8/9/22, 8/12/22, 8/16/22, 8/23/22, 8/26/22, 8/30/22, 9/7/22, 9/9/22. Your future appointments include[]: 9/16/22, 9/20/22, 9/23/22, 9/27/22, 9/30/22.

Ex. I.

Exhibit J is a laboratory report for a PEth test administered to the Individual on September 15, 2022. That PEth test was negative.

³ I could not locate an Exhibit P in the record.

Exhibits K, L, and M are appointment reservations for drug screening tests to be administered to the Individual on October 14, 2022, November 18, 2022, and December 16, 2022.

Exhibit N is a receipt for a PEth test specimen that the Individual provided on October 14, 2022.

Exhibit O is a copy of the Individual's Response to the Notification Letter, with accompanying documents, that she had sent to the LSO on July 11, 2022. The accompanying documentation included a Certificate of Completion, dated February 18, 2022, indicating that the Individual had completed a 16-hour Domestic Violence Class. Ex. O at 5. The accompanying documentation also included a Visit Verification form from a Psychiatric Facility confirming the Individual's attendance at "Anger Management classes on the dates of 2/8/22, 2/22/22, 3/1/22, and 3/15/22." Ex. O at 6. The accompanying documentation also included a letter, dated July 8, 2022, from an attorney who represented the Individual indicating that the Individual had not been formally charged as a result of her arrest on January 15, 2022, and was not likely to be. Ex. O at 7.

Exhibit Q is a laboratory report for a PEth test administered to the Individual on October 14, 2022. That PEth test was negative.

II. The Summary of Security Concerns

Attached to the Notification Letter was a Summary of Security Concerns (SSC), which informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance under Guideline G (Alcohol Consumption) of the Adjudicative Guidelines, citing the Individual's alcohol-related arrest and the Psychologist's finding that the Individual had habitually engaged in binge drinking. This information adequately justified the LSO's invocation of Guideline G. Under Guideline G, "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, . . . regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder," and "habitual or binge consumption of alcohol to the point of impaired judgment." Adjudicative Guidelines at ¶ 22(a) and (d).

The SSC further informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance under Adjudicative Guideline I (Psychological Conditions), citing the Psychologist's conclusion that the Individual has AD, which led to impaired stability and judgment. These allegations adequately justified the LSO's invocation of Guideline I. The Adjudicative Guidelines state: "[c]ertain emotional, mental, or personality conditions can impair judgement, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. Among those conditions set forth in the Guidelines that could raise a disqualifying security concern is "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness." Adjudicative Guidelines at ¶ 28(b).

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. The Hearing

In order to mitigate the security concerns raised in the SSC, the Individual presented the testimony of three witnesses, including herself, at the hearing.

The Individual acknowledged that she had been involved in an incident on January 15, 2022. Tr. at 11. The Individual acknowledged that she had been engaging in binge drinking prior to the January 15, 2022, incident, admitting that she had been drinking “pretty heavily” one or twice a month. Tr. at 34, 37. The Individual testified that, as a result of that incident, she has changed her alcohol consumption habits and has been refraining from binge drinking since the incident. Tr. at 11, 38-39. She now consumes alcohol less frequently, limiting herself to two or three drinks on a monthly basis. Tr. at 11,13-14. She testified that she attended and completed an early recovery program, which met twice weekly for one-and-a-half hours, for 11 weeks. Tr. at 11-12, 20-22. She testified that she has not been advised to permanently abstain from alcohol use by any mental health or substance abuse professional. Tr. at 41. She has not been advised to attend a relapse prevention program. Tr. at 41. The Individual testified that the Therapist found that her AD had been resolved and had diagnosed her with “mild alcohol abuse disorder.” Tr. at 22. The Individual also testified that she had completed an “anger management course.” Tr. at 29-30. The Individual had been undergoing therapy since 2018 and she and her husband have undergone marriage counseling. Tr. at 31-32. She is not presently seeing an individual therapist but intends to find a new therapist. Tr. at 34, 41. She testified that reducing her alcohol intake has helped her improve her emotional regulation and physical health. Tr. at 32-33. The Individual acknowledged and accepted her AD diagnosis. Tr. at 38-39. The Individual testified that she has been addressing her AD through attending anger management and domestic violence classes as well as an addiction program. Tr. at 38-39. The Individual also testified about several anger management techniques she had learned, including relaxation skills, deep breathing, compartmentalization, and “Automatic

Negative Thoughts.” Tr. at 43-44. She has also read some books about healthy relationship skills that have helped her relationship with her spouse. Tr. at 45-46. She has also learned how to establish healthy boundaries. Tr. at 46.

A coworker of the Individual testified on her behalf at the hearing. He has worked with the Individual since 2018. Tr. at 50. They are good friends and confide in each other. Tr. at 54. He testified that the Individual is very honest, dependable, and reliable. Tr. at 54-55. The Individual testified that he did not know much about the Individual’s alcohol consumption habits, but he knows that she has been working on controlling her alcohol use. Tr. at 50-53. He has never observed her consuming alcohol. Tr. at 56-57. The Individual told him that she enjoyed her alcohol program and found it to be very helpful, allowing her to make “real strides.” Tr. at 53, 57.

The Individual’s spouse testified at the hearing. They have been married for almost three years. Tr. at 61. He testified that, prior to the January 15, 2022, incident, the Individual would consume six or seven alcoholic beverages on two or three occasions a month. Tr. at 62-63. He testified that the Individual has been able to control her drinking and has greatly changed her alcohol consumption pattern since the January 15, 2022, incident. Tr. at 64, 66-67. At first, the Individual completely abstained from using alcohol for “a couple months,” now, the Individual limits herself to one beverage at a sitting. Tr. at 64-65. The Spouse testified that he has reduced his alcohol consumption as well. Tr. at 65-66. The Spouse described the Individual as nicer and “kinder” as a result of her therapy and reduced alcohol use. Tr. at 67. The Spouse testified that the Individual wants to avoid getting “drunk” and that alcohol does not “play a big part in our life anymore.” Tr. at 67-68.

A fourth witness, the Psychologist testified after observing the testimony of the other witnesses. The Psychologist testified that that she agreed with the Therapist’s conclusion that the Individual’s AD has been resolved. Tr. at 72, 77-79. She noted that she found that the Individual had been engaging in binge drinking, whereas the Therapist found that she had AUD Mild, in early remission. Tr. at 72-73. The Psychologist noted that this difference was, in essence, “splitting hairs.” Tr. at 73. The Psychologist further opined that the Individual: “has shown adequate evidence of rehabilitation in that she has been able to control her drinking, to not engage in binge drinking, and to not engage in heavy drinking, or even a medium level of drinking in the nine months [since the incident].” Tr. at 74. Noting that the Individual’s “participation in the Early Recovery Addiction program combined with the evidence that they took throughout the program, [in the form of regular laboratory testing] that she was not drinking is adequate in terms of satisfying my recommendation that she produce, you know, laboratory evidence of not drinking. . . .” Tr. at 75. She further noted that the testimony of the other witnesses indicating that the Individual was not binge drinking anymore “indicates that there is adequate evidence that there has been rehabilitation.” Tr. at 75. She further cited the Individual’s attending the recovery program as evidence of her rehabilitation. Tr. at 76. She noted that the Individual has developed skills to allow her to control her alcohol use and had developed “a lot of insight into the impact of alcohol on her life and her marriage.” Tr. at 76. She agreed that the Individual had developed emotional regulation and anger management skills and had begun to set appropriate boundaries. Tr. at 77-78. She characterized the Individual’s prognosis as “good.” Tr. at 79.

V. Analysis

The evidence in the record has convinced me that the Individual has successfully addressed her binge drinking and has maintained control over her alcohol use. The Individual has also been treated for and resolved her AD. The record shows that the Individual has complied with the Psychologist's treatment recommendations, attended individual counseling, completed a domestic violence class, attended anger management classes, and attended an early recovery program at an addiction medicine clinic. Moreover, there is evidence in the record indicating that the Individual has been able to abstain from excessive alcohol use for the past nine months. That evidence includes the results of her PEth and urine tests, and the credible testimony of the Individual and the Spouse. Most importantly, the Psychologist testified that the Individual has complied with her treatment recommendations, is reformed and rehabilitated from her binge drinking, and has a good prognosis.

Guideline G

The Adjudicative Guidelines set forth four factors that may mitigate security concerns under Guideline G, two of which are present in the instant case. Specifically, the Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if “[t]he individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption . . . in accordance with treatment recommendations.” Adjudicative Guidelines at ¶ 23(b). In the present case, the Individual has acknowledged her pattern of maladaptive alcohol use and has taken the appropriate steps, as discussed above, to overcome her binge drinking. Moreover, as discussed above, she has also demonstrated a clear and established pattern of modified consumption in accordance with treatment recommendations.

The Adjudicative Guidelines also provide that an individual may mitigate security concerns under Guideline G if “the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption . . . in accordance with treatment recommendations.” Adjudicative Guidelines at ¶ 23(d). In the present case, the Individual has no history of treatment and relapse,⁴ and has completed an early recovery program. The Psychologist has convincingly testified that the Individual has made satisfactory progress. The Individual's ability to use alcohol in moderation for nine months is further evidence of her satisfactory progress.

I therefore find that the security concerns raised by the Individual's binge drinking and her alcohol-related arrest under Guideline G have been resolved by the evidence in the record showing that she has been reformed and rehabilitated.

Guideline I

The Individual submitted Exhibit I, a letter from the Therapist stating that her “previous diagnosis of Adjustment Disorder has been resolved.” Ex. I at 1. The Psychologist concurred with this conclusion during her hearing testimony in which she opined that the Individual's AD had been resolved.

⁴ In the present case, the DOE's expert, the Psychologist, did not recommend that the Individual completely abstain from using alcohol, but rather demonstrate that she had learned to use alcohol in moderation. The evidence in the record, as discussed above, indicates that the Individual has not engaged in binge drinking since January 15, 2022.

The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline I if: there is a “recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual’s previous condition is under control or in remission and has a low probability of recurrence or exacerbation.” Adjudicative Guidelines at ¶ 29(b) and (c). The record clearly indicates that the Individual received counseling and treatment for her AD and has received a favorable prognosis from two duly qualified mental health professionals (the Therapist and the Psychologist). At the hearing, the Psychologist, a duly qualified mental health professional contracted by the U.S. Government, testified that the Individual’s AD is resolved.

I therefore find that the security concerns raised by the Individual’s AD under Guideline I have been resolved by the evidence in the record showing that she has been reformed and rehabilitated.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines G and I. After considering all the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has mitigated the security concerns raised under Guidelines G and I. Accordingly, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual’s security clearance should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals